

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

BILLINGS DIVISION

JOSE SILVA,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

Cause No. CV 11-82-BLG-RFC

*Related Case: CR 01-14-BLG-RFC*

ORDER DENYING REQUEST  
TO COMMENCE REVOCATION  
PROCEEDINGS

FILED  
BILLINGS DIV.  
2011 AUG 29 PM 12 26  
PATRICK E. DUFFY, CLERK  
BY DEPO-REC  
CLERK

On August 3, 2011, Jose Silva, a federal prisoner proceeding pro se, submitted a letter asking the Court to issue a writ of habeas corpus so he may appear on a petition to revoke his supervised release. Alternatively, he asks that the petition be disposed of in his absence. The letter was filed as a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

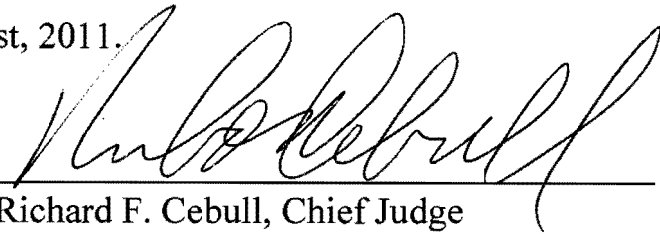
Silva did not pay the \$5.00 filing fee or file a motion for leave to proceed in forma pauperis. Because he qualified for representation under the Criminal Justice Act, Order (doc. 53), he will be granted forma pauperis status. *See also* Judgment (doc. 23) at 6, *United States v. Silva-Hernandez*, No. A-09-CR-267(1)-LY (W.D. Tex. Sept. 8, 2009).

Silva is currently in federal custody following his conviction for illegally re-entering the United States, a violation of 8 U.S.C. § 1326. Judgment at 1, *Silva-Hernandez*, No. A-09-CR-267(1)-LY. The petition to revoke his supervised release in this District is based on his commission of that offense. An arrest warrant “authorizes, but does not compel, the executive branch of government to act in a certain way.” *DeSilva v. DiLeonardi*, 125 F.3d 1110, 1113 (7th Cir. 1997). If Silva believes his rights are violated by delay of his revocation hearing, he may raise that issue when the hearing is held.

Accordingly, IT IS HEREBY ORDERED as follows:

1. Leave to proceed in forma pauperis is GRANTED. The Clerk of Court shall waive payment of the filing fee.
2. Silva’s request to compel execution of the arrest warrant, or to dispose of the matter in his absence (doc. 1), is DENIED.
3. The Clerk shall file this Order in the criminal case, *United States v. Silva*, No. CR 01-14-BLG-RFC, as well as in this case.

DATED this 29<sup>th</sup> day of August, 2011.

  
Richard F. Cebull, Chief Judge  
United States District Court